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Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil Gas and Mining

JOHN R. BAZA
Division Director

E-Mailed as PDF
to Mr. Fulton 6/29/07pm.

June 27, 2007

James Fulton, Chief
Denver Field Division
Office of Surface Mining
1999 Broadway, Suite 3320
Denver, CO 80202-5733

Re: Informal Program Amendment Pertaining to Utah Code Annotated §40-10-10

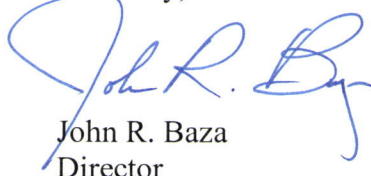
Dear Mr. Fulton:

The Division of Oil, Gas & Mining hereby submits an informal program amendment to the Office of Surface Mining in conjunction with modifications made to the state statute for Utah's Coal Regulatory Program. These modifications pertain to an amendment previously filed for the Small Operator Assistance Program (SOAP).

The division submitted a formal program amendment by letter dated October 22, 2002 relating principally to federal modifications of the SOAP provisions. S.B. 72 from the 2002 legislative session was attached to that letter. Your office identified concerns with two changes in that program amendment UT-042-FOR via a letter dated February 21, 2003. During Utah's 2006 legislative session, S.B. 46 was passed and signed by the Governor with language that addressed the two concerns of your office.

Enclosed are a side-by-side analysis of the changes to the statute as compared to the federal citation and the full text of S.B. 46. Please provide comments or questions to Steve Schneider at 801-538-5328 or steveschneider@utah.gov in order to enable our division to proceed with the filing of a formal program amendment on this matter.

Sincerely,



John R. Baza
Director

Enclosures
SLS:jc



Utah Statute (S.B. 46)

§40-10-10

(2) (d) (i) A permit application will also include the following information:

- (A) the result of test borings or core samplings from the permit area, including logs of the drill holes;
- (B) the thickness of the coal seam found;
- (C) an analysis of the chemical properties of the coal;
- (D) the sulfur content of any coal seam;
- (E) chemical analysis of potentially acid or toxic-forming sections of the overburden; and
- (F) chemical analysis of the stratum lying immediately underneath the coal to be mined.

ii) Application requirements of ~~[this]~~ Subsection (2)(d)(i) may be waived by the division if there is a written determination that these requirements are unnecessary.

§40-10-10

(5) An applicant for a surface coal mining and reclamation permit shall file a copy of the application for public inspection with the county clerk of the county, or an appropriate public office approved by the division where the mining is proposed to occur, except for information pertaining to the coal seam itself.

Comments: The first amendment to the statute clarifies and reduces the application requirements that may be waived by the division, to coincide with SMCRA. The second amendment to the statute reinstates a provision that was inadvertently deleted in S.B. 72 in 2002, pertaining to the purpose of an applicant filing a copy of the application with the county clerk.

Federal Citation

SMCRA Sec. 507(b)

(15) a statement of the result of test borings or core samplings from the permit area, including logs of the drill holes; the thickness of the coal seam found, an analysis of the chemical properties of such coal; the sulfur content of any coal seam; chemical analysis of potentially acid or toxic forming sections of the overburden; and chemical analysis of the stratum lying immediately underneath the coal to be mined except that the provisions of this paragraph (15) may be waived by the regulatory authority with respect to the specific application by a written determination that such requirements are unnecessary;

SMCRA Sec. 507(e)

Each applicant for a surface coal mining and reclamation permit shall file a copy of his application for public inspection with the recorder at the courthouse of the county or an appropriate public office approved by the regulatory authority where the mining is proposed to occur, except for that information pertaining to the coal seam itself.

6/27/2007

UTAH COAL REGULATOR PROGRAM

AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Dmitrich

House Sponsor: Brad King

LONG TITLE

General Description:

This bill modifies the requirements for obtaining a coal mining permit.

Highlighted Provisions:

This bill:

- reduces the application requirements that the division may waive; and
- clarifies that parts of the application are to be filed for public inspection.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

40-10-10, as last amended by Chapter 179, Laws of Utah 2002

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **40-10-10** is amended to read:

40-10-10. Permit application fee -- Submission of application and reclamation plan -- Determinations, tests, and samplings -- Filing of application -- Insurance required -- Blasting plan.

(1) Each application for a surface coal mining and reclamation permit under the provisions of this chapter shall be accompanied by a fee as determined by the division. The fee

specified in this Subsection (1) may not exceed the cost by the division to process and review the application.

(2) (a) The permit application and the reclamation plan submitted as part of a permit application shall be submitted in the manner, form, and with the content specified by the division in its rules, and shall include the names and addresses of:

(i) the permit applicant;

(ii) every legal owner of record of the surface and mineral estate to be mined;

(iii) the holders, of record, of any leasehold interest in the property;

(iv) any purchaser, of record, of the property under a real estate contract;

(v) the operator, if he is a person different from the applicant; and

(vi) the names and addresses of the principals, officers, and resident agent for service of process, if any of these are business entities other than a single proprietor.

(b) (i) A permit application shall include:

(A) an accurate map or plan, to an appropriate scale, clearly showing the land to be affected as of the date of the application, and the area of land within the permit area upon which the applicant has the legal right to enter and commence surface mining operations; and

(B) a statement of those documents upon which the applicant bases his legal right to enter and commence surface mining operations on the area affected, and whether that right is the subject of pending court litigation.

(ii) This chapter may not be construed as vesting in the division the jurisdiction to adjudicate property title disputes.

(c) (i) A permit application shall also include a:

(A) determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site with respect to the hydrologic regime;

(B) determination of the quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions; and

(C) collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the division of the probable cumulative impacts of all anticipated

mining in the area upon the hydrology of the area and, particularly, upon water availability.

(ii) The determination required under Subsection (2)(c)(i) shall not be required until the hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency.

(iii) The permit shall not be approved until the information required under this section is available and is incorporated into the application.

(d) (i) A permit application will also include the following information:

(A) the result of test borings or core samplings from the permit area, including logs of the drill holes;

(B) the thickness of the coal seam found;

(C) an analysis of the chemical properties of the coal;

(D) the sulfur content of any coal seam;

(E) chemical analysis of potentially acid or toxic-forming sections of the overburden;

and

(F) chemical analysis of the stratum lying immediately underneath the coal to be mined.

(ii) Application requirements of ~~[this]~~ Subsection (2)(d)(i) may be waived by the division if there is a written determination that these requirements are unnecessary.

(3) (a) If the division finds that the probable total annual production at all locations of a coal surface mining operator will not exceed 300,000 tons, and if funding is available under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Sec. 1201 et seq., the cost of the following activities shall be paid by the division, upon the written request of the operator in connection with a permit application:

(i) the determination of probable hydrologic consequences required by Subsection (2)(c), including the engineering analyses and designs necessary for the determination;

(ii) the development of cross-section maps and plans of the land to be affected, including the area to be mined;

(iii) the geologic drilling and statement of results of test borings and core samplings

86 required by Subsection(2)(d);

87 (iv) the collection of archaeological and historical information required by the division,
88 and the preparation of those plans;

89 (v) preblast surveys required by Subsection 40-10-17(2)(o); and

90 (vi) the collection of site-specific resource information and production of protection
91 and enhancement plans for fish and wildlife habitats and other environmental values required
92 by the division under this act.

93 (b) The activities specified in Subsection (3)(a) shall be performed by a qualified
94 public or private laboratory or other qualified public or private entity designated by the
95 division.

96 (c) A coal operator who has received assistance pursuant to this Subsection (3) shall
97 reimburse the division for the cost of the services rendered, if the division finds that the
98 operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons
99 during the 12 months immediately following the date on which the operator is issued the
100 surface coal mining and reclamation permit.

101 (4) (a) Information pertaining to coal seams, test borings, core samplings, or soil
102 samples or other equivalent information, as required by this section, shall be made available to
103 a person whose interest is, or may be, adversely affected.

104 (b) Information which pertains only to the analysis of the chemical and physical
105 properties of the coal, except information regarding any mineral or elemental content which is
106 potentially toxic to the environment, shall be kept confidential and not made a matter of public
107 record.

108 (5) An applicant for a surface coal mining and reclamation permit shall file a copy of
109 the application for public inspection with the county clerk of the county, or an appropriate
110 public office approved by the division where the mining is proposed to occur, except for
111 information pertaining to the coal seam itself.

112 (6) (a) An applicant for a permit shall be required to submit to the division as part of
113 the permit application a certificate issued by an insurance company, authorized to do business

114 in the state, certifying that the applicant has a public liability insurance policy in force for the
115 surface mining and reclamation operation for which the permit is sought, or evidence that the
116 applicant has satisfied other state or federal self-insurance requirements.

117 (b) The policy shall:

118 (i) provide for personal injury and property damage protection in an amount adequate
119 to compensate any persons damaged as a result of surface coal mining and reclamation
120 operations, including the use of explosives, and entitled to compensation under the applicable
121 provisions of state law; and

122 (ii) be maintained in full force and effect during the terms of the permit or any renewal,
123 including the length of all reclamation operations.

124 (7) An applicant for a surface coal mining and reclamation permit shall submit to the
125 division, as part of the permit application, a blasting plan which shall outline the procedures
126 and standards by which the operator will meet the provisions of Subsection 40-10-17(2)(o).